IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 450 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARIKH NIRANJAN RAMLAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 450 of 2000

MS SM AHUJA for Petitioner No. 1

MR LR PUJARI, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. This Revision Application under Section 397 read with

Section 401 CrPC has been preferred against the judgment and order dated 31st July, 2000 passed by the learned Principal Judge, City Civil Court, Ahmedabad in Criminal Revision Application No.77/2000.

#. The petitioner before this court is the accused in Criminal Case No.820/98 pending before the learned Metropolitan Magistrate, Ahmedabad Court No.5. The said criminal case has been registered on the police complaint. The petitioner - accused is alleged to have committed offence punishable under Sections 323 and 506(1) of the Indian Penal Code against his wife one Mrs.Varsha Parikh. Both the complainant Mrs.Varsha Parikh and the accused - petitioner are practising advocates in the Court of Metropolitan Magistrate, Ahmedabad. Nonetheless, the complainant Mrs.Varsha Parikh failed to remain present before the learned Magistrate and to give her evidence. The petitioner, therefore, on 16th October, 1999, gave an application for closing the evidence of the complainant Mrs.Varsha Parikh. The said application was allowed on 16th October, 1999. The learned Magistrate was pleased to observe that the complainant Mrs.Varsha Parikh though was present in the court compound did not remain present before the learned Magistrate for giving her evidence. She was continuously avoiding to give her evidence and was trying to delay the trial. The learned Magistrate, therefore, directed to close the evidence of the complainant and to issue summons to rest of the prosecution witnesses. Inspite of the said order, the prosecution failed to examine its witnesses. The learned Metropolitan Magistrate, therefore, on an application made by the accused - petitioner, under his order dated 7th February, 2000 ordered to close the evidence of the prosecution. Feeling aggrieved, the State preferred the above Criminal Revision Application No.77/2000 before the learned City Sessions Judge, Ahmedabad. Reliance was placed on the judgment of the Hon'ble Supreme Court in the matter of RAJ DEO SHARMA v. STATE OF BIHAR [Judgment Today 1999 (7) S.C. 317] and was urged that the prosecution evidence could not have been closed before the expiry of period of two years from the date of the framing of charge. The learned Judge was pleased to accept the contention and observed that the charge was framed on 17th July, 1998. The prosecution evidence, therefore, could not have been closed before the expiry of period of two years from that date i.e. before 17th July, 2000. However, the learned Magistrate had closed the evidence of the prosecution prematurely. The learned Judge was, therefore, pleased to allow the Revision Application, setting aside the order dated 7th February,

2000 made by the learned Magistrate and directing to allow the prosecution to examine all its witnesses including the complainant. Feeling aggrieved, the accused has preferred the present Revision Application.

#. Ms.Ahuja has strenuously urged that the evidence of the complainant Mrs.Varsha Parikh was closed under the order dated 16th October, 1999. The said order was not challenged further. The same, thus, having become final, could not have been set at naught by the learned City Sessions Judge, Ahmedabad. She has submitted that by allowing the prosecution to examine its witnesses 'including the complainant' indirectly the learned Judge has set aside the order dated 16th October, 1999, which was not the subject matter of challenge. She has further submitted that the ruling of the Hon'ble Supreme Court in the matter of Raj Deo Sharma (Supra) has not been correctly construed by the learned Judge. The said judgment can not be read to mean that in no circumstances the prosecution evidence can be closed before the expiry of period of two years from the date of the framing of charge. She has next contended that, even otherwise the prosecution had failed to give cogent reasons, why it could not have examined its witnesses on the dates set for the same. She has relied upon the Rojkam of the proceedings before the learned Metropolitan Magistrate and has demonstrated that the complainant had continuously remained absent for more than a year though the matter was set for her evidence from month to month.

#. The learned APP Mr.Pujari has contested the Revision Application and has supported the impugned judgment and order of the learned City Sessions Judge, Ahmedabad.

#. I do agree with the contentions raised by Ms.Ahuja. On perusal of the Rojkam, it is apparent that the complainant had not remained present before the learned Magistrate to give her evidence since 28th August, 1998 till 16th October, 1999 and even thereafter. No reason whatsoever has been put forth why the complainant could not have remained present to give her evidence for such a long time. Similarly, the other prosecution witnesses also have not remained present on the dates set for their evidence for a long time. The prosecution has failed to explain why it could not have kept its witnesses present before the learned Magistrate to give their evidence. Even the learned Magistrate has observed that though the complainant Mrs.Varsha Parikh has been practising in the same court and was present in the court compound, she did not remain present before the learned Magistrate to give her evidence. The intention of the complainant to delay

the prosecution is apparent. In the circumstances, if the learned Magistrate had ordered closer of the evidence of the complainant and the other witnesses, the same should not be interfered with. Further, I also agree that in the matter of Raj Deo Sharma (Supra), the Hon'ble Supreme Court has not laid down principle that in no circumstances the prosecution evidence can be closed before the expiry of the period of two years from the date of the framing of charge. Such a contention raised by the prosecution can not be countenanced. In the event, after giving sufficient time, the prosecution fails to produce its witnesses and examine them, the magistrate would be justified in closing the prosecution evidence even prior to the expiry of two years. Exactly that is what has been done in the present case. Further, it is also true that the order of 16th October, 1999 closing the evidence of the complainant Mrs.Varsha Parikh has not been challenged further. The said order has thus become final, the same, therefore, should not have been set at naught by the learned City Sessions Judge indirectly by allowing the prosecution to examine its witnesses 'including the complainant'. In my opinion, in view of the above facts, the learned City Sessions Judge ought not to have interfered with the discretionary order made by the learned Metropolitan Magistrate.

#. For the reasons recorded hereinabove the Revision Application is allowed. The impugned judgment and order dated 31st July, 2000 passed by the learned City Sessions Judge in Criminal Revision Application No.77/2000 is quashed and set aside. The order of the learned Magistrate dated 7th February, 2000 is restored. Rule is made absolute.

(Ms. R.M.Doshit, J.)

/sakkaf